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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,255	04/02/2004	Stephen W. Jacobs	17210	1781

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CNH AMERICA LLC
INTELLECTUAL PROPERTY LAW DEPARTMENT
700 STATE STREET
RACINE, WI 53404

EXAMINER

GREENHUT, CHARLES N

ART UNIT PAPER NUMBER

3652

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,255

Applicant(s)

JACOBS, STEPHEN W.

Examiner

Charles N. Greenhut

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

I. Information Disclosure Statement

1. Related application 10/853,626 should be referenced in the specification not the information disclosure statement.

II. Claim Rejections - 35 USC § 112

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. With respect to claim 1, multiple transitional phrases, i.e., “comprising” render the claim indefinite because it is unclear whether applicant is claiming the subcombination of the bale wagon, the subcombination of an improvement to the bale wagon or the combination of the bale wagon with the improvement. Based on applicant’s admitted prior art, examiner assumes that the claims are directed to the improvement to a known bale wagon consisting of the adjustable tines.

1.2. Claim 2 is incomplete for omitting essential elements because these claims merely recite a property of the tines and are devoid of any structure. I.e., “the tines *being*” and “the tines *may be*”.

1.3. Claim 8 recites the limitation, “the tines” in line 5. There is insufficient antecedent basis for this limitation in the claim.

III. Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1-3, 5 and 7 is/are rejected under 35 U.S.C. 102(b) as being anticipated by SEVEREID (US 5,333,693 A).

1.1. As best understood by examiner, with respect to claim 1-3, 5 and 7, SEVEREID discloses pivotally adjustable tines (36a)/(36b)/(36c), which may be adjusted by increments of about 1.5°-2°, dictating variable angles, an angle of about 90° formed between a vertical surface of the tines (e.g., rear Fig. 2A) and the load bed (Fig. 3), a crossbar (58), brackets (46a)/(46b) including multiple positions for each tine, a bolt (86a) and holes (86b).

IV. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 6 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SEVEREID.

1.1. With respect to claim 6, applicant merely specifies selection of an optimum angle.

Selecting an optimum value is within the capabilities of one having ordinary skill in the art. It would have been obvious to one of ordinary skill in the art to modify

SEVEREID with an angle selected from the group consisting of 89.5°, 87.5°, 86° and 84.5° in order to optimize the position of the tines.

2. Claim(s) 8-9 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NULLE (US 5,168,817 A) in view of MACLAY (US 6,328,520 B1).

2.1. With respect to claims 8-9, NULLE demonstrates that it is well known to form stacks having outer objects lean against central objects in order to promote stability (Fig. 4). MACLAY demonstrates that it is well-known to form stacks of hay bales having various lean angles (cf. Fig. 13 & 16) selected by pivotally adjusting tines (127). It would have been obvious to one of ordinary skill in the art to stack bales leaning toward the center in order to promote stability of the stack.

V. Response to Applicant's Arguments

1. In response to applicant's arguments, the recitation "bale wagon comprising a load bed, a crossbar movable along the load bed, and tines attached to the movable crossbar" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. Furthermore, applicant employs Jepson format to recite his claim, and all the limitations of the preamble applicant has admitted are old and well-known.
2. Applicant argues that claim 1, as amended, is not anticipated by SEVEREID because SEVEREID fails to disclose the tilt angle measured between the load bed and an

essentially vertical surface of the tines. This argument is not persuasive. The rearmost surface of the SEVEREID tines (Fig. 2A) may be considered to be “an essentially vertical surface of the tines” within the broadest reasonable interpretation of that term. SEVEREID, therefore, still meets all the limitations of claim 1.

3. Applicant argues that claim 6 is not rendered obvious by SEVEREID. This argument is not persuasive. Applicant does not point to any specific language within these claims which applicant feels patentably distinguishes over SEVEREID. Applicant's arguments amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

4. With respect to claim 8, Applicant, by addition of the amended language, “tilt angle selected by pivotally adjusting the tines on said bale wagon” has defined over the BUTLER reference. The rejection over BUTLER is, therefore, withdrawn. Applicant's arguments with respect to the propriety of the rejection over BUTLER set forth in the previous office action are therefore deemed moot and not addressed herein. Upon further consideration, a new grounds of rejection over NULLE in view of MACLAY is set forth above.

VI. Conclusion

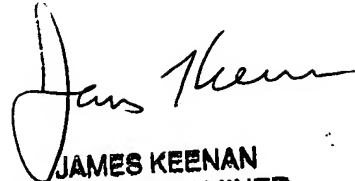
1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



JAMES KEENAN
PRIMARY EXAMINER